

Unemployment Insurance



Employer Handbook

Table of Contents

IDWD Contact Information	ii
Introduction	1
UI at a Glance	1
I. Introduction to Unemployment Insurance Tax	2
UI Taxes – In General	2
II. Getting Started	3
Employer Qualifications	3
Employee Qualifications	4
Multi-State Employment	5
Employer Registration	5
Required Poster	5
New Employer Tax Rate	6
Reimbursable Employers	6
III. Quarterly Employer Reporting	7
Quarterly Tax and Wage Reports (UC-1 and UC-5)	7
Reporting Payroll	7
Covered Employers	7
Report Due Dates	8
Retroactive Payments	8
Remittance of Amounts Due	8
IV. Buying or Selling a Business	9
Complete Transfer of Indiana Operations	9
Partial Transfer of Indiana Operations	9
V. Seasonal Employment	10
Qualifying as a Seasonal Employer	10
Loss of Seasonal Employer Status	10
Seasonal Employment	10
VI. Tax Rate Computation	11
How to Determine Your Tax Rate	11
Voluntary Payments	14
Tax Rate Summary	15
Worker Training Fund	15
Collections and Legal Action	16
VII. Your Employer Experience Account	17
Your Experience Account	17
Qualification for UI Benefits	17
How Your Former Employee's Benefits Claim Affect Your UI Experience Account	18
Mutualized Benefit Charge	19
VIII. Your Former Employee Files a Benefits Claim – What To Expect	20
IX. Maintaining Integrity of the Unemployment Insurance Program	22
Employer Audits	21
SUTA Dumping	21
X. The Appeals Process	23
Appeals	23
Review Board Proceedings	24
Indiana Court of Appeals	25
XI. Frequently Asked Questions	26
XII. Glossary	29
XIII. Special Types of Employment and Payment	31

IDWD Contact Information

UI Taxes

General Tax Questions..... (800) 891- 6499 or
In Marion County, (317) 232-7436
Web Address.....**www.in.gov/dwd**

Employer Assistance(800) 891-6499
In Marion County, (317) 232-7436

Account registration
Business transfer
Inactivate an account
Dissolutions
Address changes

Seasonal employers

Tax adjustments
Current tax rates
Merit Rating system and calculations

Federal Certification - Certify and/or re-certify taxable wages to IRS.....(317) 233-4083

Employer Refunds.....(317) 233-4083

Employer Collections

Notice and demand for payment
Payment agreements
Tax liens and Bankruptcies..... (317) 232-7395 or (317) 232-7487

Unemployment Insurance Employer Handbook

The Unemployment Insurance (“UI”) program is administered by the Indiana Department of Workforce Development (“IDWD”). This guide is issued by IDWD to help employers understand how they are affected by the law governing the UI program in Indiana. This guide explains the following:

- How IDWD opens and maintains an employer account;
- Employers’ tax obligations;
- The conditions under which former employees can collect UI benefits; and
- An employer’s responsibilities when a former employee files a claim for benefits.

How to Use the Employer Handbook:

This guide is divided into twelve (12) areas of interest. These areas are:

- | | |
|--|---|
| I. Getting Started | VII. Seasonal Employment |
| II. Quarterly Employer Reporting | VIII. The Appeals Process |
| III. Introduction to UI Tax | IX. Maintaining Integrity in the UI Program |
| IV. Tax Rate Computation | X. Buying or Selling a Business |
| V. Your Employer Experience Account | XI. Frequently Asked Questions |
| VI. Your Former Employee Files a Benefits Claim – What to Expect | XII. Glossary |

If at any time you encounter a term that is unfamiliar, please turn to the glossary for an explanation. This will improve your understanding of this information.

Statements in this booklet are intended for general information and ***do not have the effect of law or regulation***. This guide is not designed to cover all phases of the law or to answer all questions.

To obtain copies of the laws relating to IDWD, please visit www.in.gov/dwd or call IDWD at 1- (800) 891-6499 or in Marion County, (317) 232-7436.

UI at a Glance - 2006

Maximum Weekly Benefit Amount: \$390

Minimum Weekly Benefit Amount: \$50

Benefit Duration: 8-26 weeks

Fund Ratio Schedule: A

Website: www.in.gov/dwd

New Employer Tax Rate: 2.7% (1.0% for Government Employers)

Minimum Earned Tax Rate: 1.1%

Maximum Earned Tax Rate: 5.6%

Penalty Tax Rate: 5.6%

Taxable Wage Base: \$7,000

I. Introduction to Unemployment Insurance Tax

A. UI Taxes – In General

UI is a federal-state program jointly financed through federal and state employer payroll taxes (federal and state UI tax). These programs are regulated under the Federal Unemployment Tax Act and the State Unemployment Tax Act.

Federal Unemployment Tax (FUTA)

Most employers liable for state unemployment taxes are also liable for federal unemployment tax (“FUTA”). The current federal taxable wage base is the first \$7,000 paid to an employee during the calendar year.

FUTA is designed to produce federal revenue to pay administrative costs of operating state unemployment compensation programs and public employment services. It also pays the federal share of extended benefit costs. FUTA is paid directly to the IRS.

Employers who submit complete payroll reports on time and pay their state unemployment taxes on time are given a substantial credit against the total FUTA tax owed. FUTA taxes can be reduced from 6.2% to 0.8% when these conditions are met.

State Unemployment Tax Act (SUTA)

Employers liable under SUTA are required to pay unemployment taxes to the state. UI is a tax paid by the employer without deduction from the wages of any employee.

Factors, including benefits paid to former employees, voluntary payments made, and the employer’s partial sale or purchase of other businesses, also impact your rate. Your tax rates may also be affected by provisions of the law concerning how long you have been subject to SUTA, your recent

reporting activity, and your tax or reporting delinquency.

These taxes are deposited in the state UI Trust Fund. Monies from this fund are used exclusively to pay UI benefits to those eligible under SUTA requirements.

Certification

Annually, the IRS requires that IDWD certify to the IRS all taxable wages and all tax payments made by each employer to IDWD for a particular calendar year. The certification also indicates the rate paid and whether or not payments were timely for IRS purposes.

If the taxable wages and tax payments you reported on your annual IRS Form 940 do not match what you reported and paid to IDWD, you may receive a **discrepancy letter** from the IRS or IDWD requesting an explanation. You must correct the discrepancy by filing a corrected IRS 940 or correcting your wage information with IDWD. This will enable you to receive a recertification.

Method of Payment

There are two (2) methods for making payments under the SUTA tax provisions – reimbursement and contributions. Reimbursement is covered in section II-G.

Most employers are contributing employers who pay taxes (contributions) at a specified rate on a quarterly basis. All contributing employers pay taxes at a rate based on their “experience.” Taxes not paid when due are subject to interest charges and other associated collection costs.

II. Getting Started

A. Employer Qualifications

You are liable for payment of UI tax under the Indiana Department of Workforce Development Act (“**IDWD Act**”) if you meet any of the following definitions of **employer**:

Regular Business Entity (IND. CODE § 22-4-7-1)

- You have an employee for some part of a day, in each of twenty (20) weeks during a calendar year; or
- You pay \$1,500 or more in gross wages during a calendar quarter.

Complete Acquisition (IND. CODE § 22-4-7-2(a))

- You have acquired all or substantially all of an organization, trade or business, or assets, and you use these in the continuance of a trade or business.

Partial Acquisition (IND. CODE § 22-4-7-2(b))

- You have acquired a distinct and segregable portion of an organization, trade, or business, rather than the total business, and use these in the continuance of a trade or business.

Entity with FUTA Liability (Ind. Code § 22-4-7-2(f))

- You are liable for any federal UI tax (FUTA, see section I-A) in another state. This makes you immediately liable when you have employees employed in Indiana.

Voluntary Election (IND. CODE § 22-4-7-2(d))

- You have elected to become fully subject to this article to the same extent as any other employer, assuming you do not meet any of the other definitions of employer listed in this section.

Agricultural Employer (IND. CODE § 22-4-7-2(e))

- You have agricultural employees and pay \$20,000 or more in cash wages in a calendar quarter; or
- You have ten (10) or more agricultural employees for some part of a day in each of twenty (20) weeks during a calendar year.

Governmental Employer* (IND. CODE § 22-4-7-2(g))

- Service is performed by an individual in the employment of this state or any government entity, for any amount of wages.
- Exclusions include: elected officials, members of a legislative or judiciary body, members of the state National Guard or Air National Guard, employees serving on a temporary, emergency basis, and individuals designated in major non-tenured policy-making or advisory positions.
- Government employers are required to pay UI taxes starting with the first dollar of payroll.

See section XIII for a chart listing special types of employment and payments and their status regarding UI tax liability.

II. Getting Started

A. Employer Qualifications (Continued)

Not-for-Profit Employer* (IND. CODE § 22-4-7-2(h))

- You are a corporation, community chest, fund, or foundation organized and operated exclusively for **religious, charitable, scientific, testing for public safety, literary, or educational purposes**, or to foster national or international amateur sports competition (but only if no part of your activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals (26 U.S.C. 3306(c)(8), 501(c)(3));
- No part of your net earnings go to the benefit of any private shareholder or individual; and
- You employ four (4) or more individuals for some portion of a day in each of twenty (20) different weeks during the calendar year.

Domestic Employer (IND. CODE § 22-4-7-2(i))

- You have hired household help of any kind and have paid a total of \$1,000 or more in wages in any calendar quarter in a calendar year.

* If you are a Governmental or Not-for-Profit employer you may opt to become a Reimbursable Employer, as opposed to a typical taxable employer. See section II-G for more details.

Individuals providing services for you in return for wages will be considered “employees” for the purposes of the UI program unless all of the following are met:

- The individual is free from control and direction in connection with the performance this service;
- The service is performed outside your usual course of business, and the individual’s usual area of employment within your business; and
- The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature of the work she/he does for you or is a sales agent who is paid on commission only and has complete control over his/her own time and effort.

Note: It is the **right to control** that is important. It is not necessary that the control is ever exercised.

See section XIII for a chart listing special types of employment and payments and their status regarding UI tax liability.

B. Employee Qualifications

An employee is an individual who performs a service for you under a contract of hire for payment. In order for this individual to count toward your employer qualification, as well as to be eligible for UI benefits, the individual must be an **employee**, not an **independent contractor**.

II. Getting Started

C. Multi-State Employment

When an employee performs services in more than one state, a determination must be made regarding in which state(s) the employee earnings must be reported. The determination shall be made by applying the following test in the sequence indicated:

- 1) Is the individual's service localized in one state? If so, the employment is reportable to that state.
- 2) If the individual's service is not localized in any one state, does the individual perform some service in the state in which the base of operations is located? If so, the employment is reportable to that state.
- 3) If the individual's service is not localized in any one state and the individual does not perform any services in the state in which the base of operations is located, does the worker perform any service in the state from which the employer's services are directed and controlled? If so, the employment is reportable to that state.
- 4) If none of the above criteria are met, in which state does the employee reside? The employment will be reportable in that state.

D. Employer Registration

If you meet a definition of "employer" set out in section II-A above, you must register with IDWD. You must register during the quarter in which you first become liable for payment according to the requirements described for each type of employer above.

You may register by completing State Form 2837 (Report to Determine Status). There are two (2) ways to obtain this form:

- Online at www.in.gov/dwd (click on Employers, Unemployment Insurance, then Forms), or
- Call IDWD at 1-800-891-6499 and one will be mailed to you.

Return the form by mail to:
Indiana Dept. of Workforce Development
10 N. Senate Ave., RM SE 106
Indianapolis, IN 46204-2277

Once you register with IDWD, you will be assigned an individual account number and will be sent pertinent information for new employers. This will include information regarding quarterly reporting requirements, which are described in part D below.

Failure to register **does not** relieve you of the responsibility to remit UI taxes timely. Failure to register and pay the appropriate taxes will result in penalties and interest as discussed below in section VI-E.

-Coming Soon-

Employers will be able to register with IDWD using the new **Uplink** system online, available 24 hours per day, 7 days per week. This will make registration quick, easy, and safe.

E. Required Poster

All employers liable for UI taxes must prominently display a poster where all employees can see it. To meet this requirement, posters should be posted in a sufficient number of locations at each work site, so that employees will have an opportunity to read them. Upon request, you must give employees information necessary for them to obtain their full UI rights and benefits under the law.

II. Getting Started

E. Required Poster (Continued)

Contact IDWD to obtain the appropriate poster at no cost to you. You can also download the posters in English and Spanish at www.in.gov/dwd (click on Employer, Unemployment Insurance, then Forms).

If you don't have a permanent worksite regularly accessed by your employees, IDWD can provide you with individual notices to give your employees.

F. New Employer Tax Rate

New government employers are taxed at a rate of **1.0%**. All other new employers are taxed at the rate of **2.7%**. New employers will remain at this rate until they have:

- Been subject to UI taxes for thirty-six (36) consecutive calendar months prior to the rate computation date (June 30th);
- Had some annual payroll in each of the three (3) twelve (12) month periods immediately preceding the rate computation date; and
- Have not qualified for a penalty rate.

Once the above criteria have been met, you are qualified for an experience rating, also known as a merit rate. Experience rates are discussed in detail in Section VI-A.

G. Reimbursable Employers

Not-for-profit and governmental employers (defined in part A above) may choose to reimburse the UI Trust Fund for benefit payments charged by their employees. They can do this by:

- Providing IDWD with a copy of their Internal Revenue Service ("IRS") tax exemption letter; and
- Submitting a completed State Form 1065 (Election to Pay Tax or to Become Liable).

Once an employer qualifies as a reimbursable employer, the status is effective for a period of two (2) full calendar years, at which time the employer may elect to become a taxable employer. Like taxable employers, reimbursable employers must also file quarterly reports UC-1 and UC-5 as described in part E below.

Reimbursable employers pay into the UI Trust Fund an amount equal to the benefits charged on their individual account. Reimbursable employers are liable for the same charges as taxable employers, so reimbursable employers will not be charged if an employee voluntarily quits or is discharged for just cause. See section VII for more information on how benefit payments are charged to employers.

If you have recently bought or sold a portion or all of a business, turn to **section IV for important information regarding your account.**

III. Quarterly Employer Reporting

A. Tax and Wage Quarterly Reports (UC-1 and UC-5)

After you (the employer) have been issued an account number, quarterly reports UC-1 (Quarterly Contribution Report) and UC-5 (Quarterly Wage Report) will be automatically forwarded to your business address at the end of each calendar quarter. It is your responsibility to monitor the receipt of quarterly reports. If you do not receive these reports, call 1-800-891-6499 or (317) 232-7436 to request the missing report(s).

B. Reporting Payroll

For UI tax purposes, if you are liable for any part of a calendar year, you are liable for the entire year. So, if you qualify in only one quarter during the calendar year, you must report all payrolls during that entire calendar year. You will receive quarterly reports based on information provided to IDWD during your employer registration. If you receive a quarterly report for a quarter in which you have no payroll to report, write "Nothing to Report" on the quarterly report and return via mail. **You may report using paper or magnetic media.**

Payroll must be reported for the quarter in which it was paid. Benefits are determined based on quarterly wages; therefore, payroll cannot be reported in only one quarter for the entire year.

You are required to file a quarterly report even if you have no payroll to report. If this is the case, submit the required reports marked "Nothing to Report." If IDWD finds that you have failed to file any payroll report, IDWD will make an estimate based on the best reasonable evidence.

Corrections to quarterly reports need to be made for each quarter in which an error was made. It is your responsibility to notify IDWD of any changes in your address, adjustments to quarterly reports, or the *selling, purchasing, or closing of your Indiana operations*. This can be done by completing State Form 44954 (Employer's Contribution Adjustment Report) or sending a letter referencing your account number, the quarter to be corrected, and the problem to:

Indiana Dept. of Workforce Development
10 N. Senate Ave., RM SE 106
Indianapolis, IN 46204-2277

If you need assistance or information, visit www.in.gov/dwd or call (800) 891-6499.

C. Covered Employers

Coverage of your employees continues as long as you meet IDWD qualifications. If you fail to meet employer qualifications for the preceding year, you have until the following January 31st to file a written request to terminate coverage.

For UI tax purposes, there is no distinction between a full-time employee and a part-time employee. If an employee works for any amount of time during a calendar week, you must count that week as a "week of employment" when considering the twenty (20) week qualification.

There is also no distinction between S-Corporations and business corporations (C-corporations). All corporate officers must report all payments for services.

III. Quarterly Employer Reporting

D. Report Due Dates

All active employers must file a quarterly report by the report due date for that quarter. Reports are mailed the third month of the quarter and are due as follows:

Quarterly UC-1 / UC-5 Report Due Dates

Quarter	Wages Paid in Period	Report Due Date
First	January, February, March	April 30 th
Second	April, May, June	July 31 st
Third	July, August, September	October 31 st
Fourth	October, November, December	January 31 st

Failure to receive notice to file a report does not relieve you of the responsibility for timely filing of that report.

E. Retroactive Payments

You are required to file a notice when you make a retroactive payment of income to an employee that would reduce the employee's benefit amount (includes wages, vacation pay, severance pay, etc.). If you make such a payment to an individual who is claiming or has claimed benefits during the period covered by the retroactive payment, **notify IDWD immediately**. Please report the week(s) during which both the retroactive payment and the UI benefit payment occurred. A letter or memo may be used to furnish this information.

Employers who fail to file complete quarterly reports or have any outstanding liabilities will be subject to a penalty tax rate for the following calendar year. The current penalty rate is 5.6%.

F. Remittance of Amounts Due

Remittance of the total amount due should be submitted with your quarterly reports. The amount due will include taxes and administrative assessment, if applicable, but should also include any penalty and interest due if the report is filed past the due date. **You also have the option of paying by credit card or electronic check payment at www.in.gov/dwd (click on Employers, Unemployment Insurance).**

IV. Buying or Selling Your Business

A. Complete Transfer of Indiana Operations (IND. CODE § 22-4-7-2(a))

If you are new to the State of Indiana, or if you are already paying Indiana UI taxes, and you:

1. Acquire (purchase, lease, or take control of) *substantially all* the assets of an Indiana operation, which results in the continuance of an organization, trade, or business; or
2. Are issued a new federal identification number, merge, incorporate, or reorganize your business in any manner,

You immediately qualify for UI coverage and **assume the tax position of the previous owner/dispenser**. You (the acquirer) receive the experience account balance and tax rate of the previous owner and are entitled to consider the wages previously reported by the dispenser when computing the \$7,000 tax base per employee, per calendar year of those employees you retain.

All outstanding tax liabilities are also carried forward from the previous owner to you, the new owner.

You, the successor/acquirer, must complete State Form 2837 (Report to Determine Status), and the predecessor/dispenser must complete State Form 46799 (Report of Transfer – Complete Sale).

These forms can be found at www.in.gov/dwd (Click on Employer, Unemployment Insurance, and Forms).

B. Partial Transfer of Indiana Operations (IND. CODE § 22-4-7-2(b))

If you:

1. Purchase a distinct and segregable portion of an organization, trade, or business; and
2. Retain employees of that business, you will be entitled to consider the wages reported by the previous owner/dispenser when computing the \$7,000 tax base per employee, per calendar year.

The predecessor/dispenser must transfer a proportionate portion of the experience balance and the merit rate to you (the successor/acquirer). This must be done within thirty (30) days from the date of disposition, or not later than ten (10) days after notification from IDWD. Employers must complete State Form 23299 (Report of Transfer-Partial Sale). Failure to complete this form will result in a IDWD-mandated flat 50% percent transfer of the dispenser's experience balance to your experience balance.

If the transfer occurs during a calendar quarter, two (2) quarterly reports must be filed: the UC-1 and UC-5. The predecessor/dispenser must report its wages paid from the first date in the quarter until the date of disposition. These forms and the resulting UI tax are due immediately following the disposition date.

You (the successor/acquirer) file the UC-1 and UC-5 from the date of disposition to the end of the quarter on the due date, thirty (30) days after the quarter ends.

If the successor/acquirer has an existing account with IDWD, the successor/acquirer's merit rate will be retained for the calendar year of the acquisition. These forms can be found at www.in.gov/dwd.

V. Seasonal Employment

A. Qualifying as a Seasonal Employer

A seasonal employer operates all or part of a business for recurring periods of less than twenty-six (26) weeks in a calendar year due to either the seasonal nature of the business or climatic conditions.

In order to be considered a seasonal employer for UI tax purposes, you must file Form 2003 (Request for Seasonal Determination Status) with IDWD. The IDWD's determination will be made within ninety (90) days after receipt of the request. Seasonal employers must reapply every two (2) years to keep their seasonal status.

After IDWD approval, an employer becomes a seasonal employer effective the first day of the next calendar quarter.

In order to qualify as a seasonal employer for a portion of your business, that portion must be identifiable as a functionally distinct operation. For example, a municipally owned golf course would be considered a portion of the operation of the municipality, and if it is in operation less than 26 weeks each calendar year, the golf course could qualify as a seasonal employer.

B. Loss of Seasonal Employer Status

If your seasonal operation exceeds twenty-five (25) weeks in a calendar year, you must give IDWD written notice that the seasonal period has been exceeded within thirty (30) days after the end of the twenty-sixth (26th) week of operation.

Your seasonal status is automatically lost for the period of operation after that calendar quarter. Wages you paid in this period are usable by your employees as regular wages to establish UI claims.

If you have lost the designation of "seasonal employer" you may apply to IDWD for reinstatement in any calendar year after the year in which the designation was revoked.

Your seasonal status will automatically be revoked after two (2) years and you must resubmit the Request for Seasonal Determination to maintain seasonal status. You may call IDWD to request one be mailed to you.

C. Seasonal employment

Seasonal employment is service performed for an approved seasonal employer during the approved seasonal period of less than twenty-six (26) weeks.

You must inform IDWD of the number of positions you have classified as seasonal within the approved seasonal portion(s) of your business. Opening and closing dates of each seasonal operation must also be specified. IDWD provides special forms for this information. Please call IDWD to request one.

You must keep an accurate account of wages paid to seasonal workers within the approved seasonal period. Wages should continue being reported quarterly. IDWD provides special wage reporting forms with coding for seasonal employees.

UI benefits may be paid to individuals on the basis of service performed in seasonal employment *only if the claim is filed within the approved seasonal operating period*. If the claim is filed outside the seasonal operating period, benefits may be paid only on the basis of non-seasonal wages.

VI. Tax Rate Computation

A. How to Determine Your Tax Rate

The UI tax rate is determined based on a combination of the solvency of the UI Trust Fund and each individual employer's account status (as of June 30th of each year).

If you have recently bought or sold all or a portion of a business, please see section IV for important information about your tax rate calculation.

Your tax rate is determined by following three steps:

1. **Determine the applicable rate schedule;**
2. **Determine whether or not you are eligible for a merit rate; and**
3. **Determine your experience rate ratio and UI tax rate.**

These steps are discussed in detail below.

1. Determine the applicable rate schedule

The applicable rate schedule is based on the UI Trust Fund's fund ratio for the preceding year. The fund ratio is a numerical evaluation of the trust fund that compares the balance in the Trust Fund as of September 30th to the total payroll of all UI tax-liable Indiana employers for the preceding calendar year. The fund ratio is applied to the Fund Ratio Schedule to determine the applicable rate schedule.

$$\text{FUND RATIO} = \frac{\text{UI Trust Fund Balance as of computation date (9/30)}}{\text{Total payroll of all subject employers for the previous calendar year}}$$

Once you've determined the Fund Ratio, use it to select the applicable rate schedule from the Fund Ratio Schedule below.

Fund Ratio Schedule		
The fund ratio is:		Applicable Schedule
As much as:	But less than:	
	1.00%	A
1.00%	1.50%	B
1.50%	2.25%	C
2.25%	3.00%	D
Declared by Legislature*		E

*In rare circumstances, the Legislature may declare that schedule E shall be in effect. In this event, you will be paying based on schedule E regardless of the rate applicable based on the fund ratio.

2. Determine whether or not you are eligible for a merit rate

There are three (3) types of UI tax rates:

- New Employer Rates;
- Penalty Rates; and
- Merit Rates.

You must determine what type of rate will be applicable to you before you can determine your rate. The UI tax rates for the following year are computed based on your account status as of June 30th (the computation date) and your past thirty-six (36) months' payroll.

VI. Tax Rate Computation

A. How to Determine Your Tax Rate (Continued)

2. Determine whether or not you are eligible for a merit rate (continued)

New Employer Rate

You will be taxed at the new employer rate, 2.7%, or 1.0% if you are a government employer, until you meet the following conditions:

- a) You have been subject to paying UI taxes for the thirty-six (36) consecutive months immediately preceding the computation date;
- b) You have some amount of taxable or gross wages in each of the three (3) twelve (12) month periods immediately preceding the computation date; and
- c) You are not subject to the penalty rate (see below).

If you qualify for a new employer rate, you can skip step three (3) below.

Penalty Rate

Any employer, new or merit-rated, can be taxed at the penalty rate. You are subject to the penalty rate, currently 5.6%, if:

- a) ***You fail to file any required quarterly reports*** up to and including the quarter immediately preceding the computation date; or
- b) ***You fail to pay the taxes, interest and/or penalty charges*** owed for these quarters within ten (10) days of the specific date requested by Form 1171 (Merit Rate Delinquency Notice) sent by certified mail.

If you meet the conditions above, your rate will not be less than 5.6%. This rate is divided into two parts, a computed tax rate and a penalty rate, which together equal 5.6% under the current schedule. One percentage point (1.0%) of the rate, or the

amount of your payment that is attributable to the increase in the rate, whichever is less, is imposed as a penalty that is due. This is deposited into the Special Employment and Training Fund.

If you qualify for the penalty rate, you will receive a **Requirement C Notice** to help you file your FUTA Tax Return (Form 940). The amount you will report on that form is your computed rate only, not the penalty rate.

If you qualify for this penalty rate, you can skip step three (3).

Merit Rate

Employers that no longer hold New Employer Status (see above) and are not subject to the penalty rate (see above), qualify for an experience-based merit rate.

A merit rate is computed based on:

- Your own account status as of the computation date (June 30th); and
- Your past thirty-six (36) months' payroll.

Next, if you qualify for the New Employer or Penalty Rate, your rate is determined at this point. If you qualify for a merit rate, go to step three (3) below to determine your tax rate.

VI. Tax Rate Computation

A. How to Determine Your Tax Rate (Continued)

3. Determine your experience rate ratio and tax rate

Your merit rate is based on the status of your IDWD employer experience account. The experience account is where IDWD keeps track of all taxes (contributions) paid into your account and all benefits charged against your account. Your employer experience account is discussed in more detail in section VII.

Your experience account will have one of the following status designations:

- **Credit reserve balance** - Your state UI taxes paid exceed benefits charged to your account; or
- **Debit balance** – UI benefits charged to your account exceed state UI taxes paid into it.

If you have a **credit reserve balance**, the **credit reserve ratio** shall be used to determine your merit rate. If you have a **debit balance**, the **debit reserve ratio** shall be used to determine your merit rate. These ratios are discussed below.

Next, find your tax rate following the instructions below based on the status of your account.

Credit Reserve Balance Accounts

Credit reserve balances are evaluated using the Credit Reserve Ratio, which compares the credit reserve balance (including all timely contribution payments made for the quarter in which the computation occurs) to the prior thirty-six (36) months' total taxable wages reported by the employer (or the employer's predecessor). It is used to determine your tax rate according to the rate schedule for accounts with credit balances.

$$\text{Credit Reserve Ratio} = \frac{\text{Experience account credit balance as of computation date}}{\text{Total taxable wages paid by the employer/predecessor during the 36 months immediately preceding the computation date}}$$

Next, use the credit reserve ratio (above) and the rate schedule (determined in step 1) to find your applicable merit rate in the chart below. In 2006, Schedule A is applicable.

Rate Schedule for Accounts with Credit Balances						
The Credit Reserve Ratio is:		Rate Schedules (Rates below are in %)				
As much as:	But less than:	A	B	C	D	E
3.00		1.10	0.10	0.10	0.10	0.15
2.80	3.00	1.30	0.30	0.10	0.10	0.15
2.60	2.80	1.50	0.50	0.10	0.10	0.15
2.40	2.60	1.70	0.70	0.30	0.10	0.20
2.20	2.40	1.90	0.90	0.50	0.10	0.20
2.00	2.20	2.10	1.10	0.70	0.30	0.40
1.80	2.00	2.30	1.30	0.90	0.50	0.60
1.60	1.80	2.50	1.50	1.10	0.70	0.80
1.40	1.60	2.70	1.70	1.30	0.90	1.00
1.20	1.40	2.90	1.90	1.50	1.10	1.20
1.00	1.20	3.10	2.10	1.70	1.30	1.40
0.80	1.00	3.30	2.30	1.90	1.50	1.60
0.60	0.80	3.50	2.50	2.10	1.70	1.80
0.40	0.60	3.70	2.70	2.30	1.90	2.00
0.20	0.40	3.90	2.90	2.50	2.10	2.20
0.00	0.20	4.10	3.10	2.70	2.30	2.40

VI. Tax Rate Computation

A. How to Determine Your Tax Rate (Continued)

3. Determine your experience rate ratio and tax rate (Continued)

Debit Balance Accounts

Debit balance accounts are evaluated using the Debit Reserve Ratio, which compares the experience account debit balance (including all timely tax payments made for the quarter in which the computation date occurs) to the total payroll of the employer (or the employer's predecessor) during the thirty-six (36) months immediately preceding the computation date. It is used to determine your tax rate according to the rate schedule for accounts with debit balances.

Debit Reserve Ratio	=	Experience account debit balance as of computation date
		Total taxable wages paid by the employer/predecessor during the 36 months immediately preceding the computation date

Next, use the debit reserve ratio (above) and the rate schedule (determined in step 1) to find the applicable merit rate in the following chart. In 2006, Schedule A is applicable.

Rate Schedule for Accounts with Debit Balances						
The Debit Reserve Ratio is:		Rate Schedules (Rates below are in %)				
As much as:	But less than:	A	B	C	D	E
	1.50	4.40	4.30	4.20	4.10	5.40
1.50	3.00	4.70	4.60	4.50	4.40	5.40
3.00	4.50	5.00	4.90	4.70	4.70	5.40
4.50	6.00	5.30	5.20	5.10	5.00	5.40
6.00		5.60	5.50	5.40	5.40	5.40

B. Voluntary Payments

Each year that you qualify for a **merit rate** (see section VI-A above), you will have the option of making voluntary payments in addition to your required UI tax payments. These payments are added to your experience account balance to enable you to qualify for a lower tax rate.

In order for these payments to be included in the experience account as of the rate computation date, the payments must be made within thirty (30) days following the date upon which the IDWD mails notice that such payments may be made (Form 1075).

You **cannot** make voluntary payments if you do not qualify for a merit rate (e.g., new employers, employers paying at the penalty rate) or if you are already paying at the lowest rate possible under the current schedule.

VI. Tax Rate Computation

C. Tax Rate Summary

Your tax rate is determined based on the solvency of the UI trust fund as well as your individual account status. The fund ratio (step 1 above), which determines the rate schedule, is how the trust fund solvency is factored into the rate. The credit/debit reserve ratio (step 3 above) incorporates your individual account status into the rate.

Many factors affect your tax rate. An increased rate may be the result of an increase in your employees' taxable wages or an increase in your employees' benefit claims, which decreases your experience account balance. Also, the trust fund suffers when statewide total benefits paid exceed total taxes collected. As a result, all employers pay at a higher tax rate in order to replenish the trust fund. All employers can avoid paying at the penalty rate by reporting and paying taxes timely.

Please read section VII-C, for more information on how UI Benefits are determined and how those determinations affect your account.

D. Worker Training Fund

In 2001, the Indiana General Assembly passed a law (IND. CODE § 22-4-10.5 et seq.) to provide a fund for incumbent worker training and tasked IDWD with collecting this assessment, known as the Worker Training Assessment. Incumbent workers are those individuals who are currently employed. **This assessment will not affect your UI experience account.**

Worker Training Assessment

You will be charged the Worker Training Assessment of .09% of your UI taxable wages for the previous calendar year. For example, if your previous calendar year UI taxable wages totaled \$7,000, your assessment would be \$6.30.

When this law was passed, the UI tax rate schedules A, B, C, and D were all reduced by .01%.

Payment of the Worker Training Assessment

IDWD is required by law to mail your assessment on or before May 1st of each year. Payment of the assessment is due May 31st of the same year. If a balance is due, a follow-up assessment notice will be mailed to you in November of the same year.

If your payment is postmarked after the due date, you will be charged a one-time penalty fee of twenty-five dollars (\$25.00) and interest on the amount due at the rate of 1% per month.

Payment should be mailed to:
Worker Training Fund
P.O. Box 6285
Indianapolis, IN 46206-6285

Adjustments to gross and taxable wages

Adjustments you make to your gross and taxable wages will have an impact on your Worker Training Assessment. You should use the current wage adjustment form (SF 44954) to report the adjustment. The adjustment transaction will be processed through the UI tax system and automatically update the status of your Worker Training Assessment.

VI. Tax Rate Computation

D. Worker Training Fund (Continued)

Contacting IDWD

If you have any additional questions concerning the Worker Training Assessment, or if you would like to apply for funds from the Worker Training Fund, contact IDWD at (317) 232-7436 or (800) 891-6499. Office hours are Monday through Friday from 8:00am until 4:30pm. You can also visit IDWD online at www.in.gov/dwd/employers/grants_credits.html.

E. Collections and Legal Action

If you fail to pay your quarterly UI tax payment on or before the due date, the following will occur:

- A penalty charge of 10% of the quarterly tax amount will be assessed;
- You will be charged 1% interest on the tax amount due for each month the tax amount is outstanding; and
- A penalty of 50% of the outstanding amount will be assessed if it is found that you committed *fraud with the intent to evade payment*.

If your quarterly report is sent to IDWD without **full** payment, a Notice and Demand will be sent to you. This notice will detail all outstanding tax, interest, and penalty, which equals the total liability due for that quarter. Failure to pay a Notice and Demand will result in additional collection activities by IDWD. **If you do not submit a written response/protest within eighteen (18) days from the date of the Notice and Demand, the assessment will become final and will be due.** If you have questions concerning the amount, please contact IDWD immediately.

Delinquent tax, interest, and penalty charges may enable IDWD to acquire a lien on the delinquent employer's real estate and property.

In Indiana, delinquent employers may also commit misdemeanors by doing the following:

- Making a false statement to prevent or reduce payment of benefits;
- Encouraging or inducing an individual to waive or forego benefits rights; or
- Failing to testify or answer any lawful inquiry.

The law also provides a general penalty for any person who willfully violates any provision of the IDWD Act or the rules and regulations of the UI Board.

IDWD aggressively pursues delinquent accounts. Delinquent employers should either pay the amount due, or contact IDWD as soon as possible to discuss payment options.

VII. Your Employer Experience Account

This section of the guide will explain how UI benefits are determined and how they affect your experience account. If you have recently bought or sold any portion of your business, see section IV for important details regarding your experience account.

A. Your Experience Account

All UI tax dollars collected by IDWD are deposited into the UI Trust Fund. IDWD maintains an individual account record for every employer covered under the IDWD Act.

Every time you pay UI tax, make a voluntary payment, or reimburse IDWD (if you are a reimbursable employer), the amount is posted to your account. The only money drawn from your account is for UI benefits paid to your former employees, employees working reduced hours, and employees who have been laid off. Your account is also reduced by the annual Mutualized Benefit Charge. A claimant's UI benefit payments are charged proportionately against the accounts of all of that claimant's base period employers.

B. Qualification for UI Benefits

In order to qualify for benefits, a claimant must:

- i. Earn sufficient wage credits during his/her base period;
- ii. Be unemployed through no fault of his/her own; and
- iii. Be able, available, and actively seeking full-time work.

Each of these criteria will be addressed in more detail below.

Sufficient Wage Credits Earned During Base Period

A claimant's **base period** consists of the first four (4) of the last five (5) completed calendar quarters. To establish a valid claim, an individual must have total wage credits during the base period that are at least one and one-fourth (1.25) times greater than the claimant's highest quarter wages. The claimant must also have base period wages totaling at least \$2,750, with \$1,650 of those wages earned in the last six (6) months of the base period.

Unemployed Through "No Fault of His/Her Own"

Claimants are only entitled to UI benefits if they are unemployed through no fault of their own. If the claimant quits voluntarily (without a good, work-related reason), is discharged for just cause, or is discharged for gross misconduct, the claimant is not eligible for UI benefits. See section VII-C for further explanation of just cause and gross misconduct.

Able, Available, and Actively Seeking Work

A claimant's benefits can be denied or reduced if the claimant:

- Refuses a suitable offer of work;
- Fails to go to a job referral made by his/her local WorkOne Center;
- Cannot show proof that he/she is actively searching for work according to IDWD work search requirements; or
- Is temporarily not available for work due to illness, injury, leave of absence, or suspension due to work-related misconduct.

A claimant's weekly benefit payment can be reduced by one-third (1/3) for each day he/she is unavailable.

VII. Your Employer Experience Account

B. Qualification for UI Benefits (Continued)

Benefit Amount

The maximum weekly benefit amount is 5% of the first \$2,000 of the claimant's highest quarter wages during his/her base period, plus four percent (4%) of the remaining wages in that quarter (up to \$9,250). This amounts to a maximum weekly benefit amount of \$390. The minimum weekly benefit amount is \$50.

The maximum total benefit amount for each claim is equal to 28% of the claimant's total base period wages (up to \$9250 per quarter) or twenty-six (26) times the claimant's weekly benefit amount, whichever is less. Each claim remains valid for fifty-two (52) weeks (the benefit year), and claimants may collect benefits for a period of eight (8) to twenty-six (26) weeks.

C. How Your Former Employee's Benefits Claim Affects Your UI Experience Account

A claimant's UI benefit payments are charged proportionately against the accounts of all of his/her base period employers. If the claimant worked for two (2) or more employers during his/her base period, the benefit payment charges are made first to the account of the most recent employer, then the next most recent, and so on. Each employer is charged for the portion of the claimant's benefits that relates proportionately to the amount of wages paid by that employer to the claimant during the claimant's base period (up to \$9250 per quarter).

What if the claimant voluntarily quit or was discharged for just cause?

If your employee voluntarily quits or is discharged for just cause, it is a **disqualifying separation**. Your former employee will not be entitled to receive benefits for the week in which the separation occurred and until he/she earns wages that equal or exceed the weekly benefit amount in each of eight (8) weeks. After this suspension, the employee's maximum benefit amount will be reduced by 25%. This reduction will be applied only once, regardless of the number of disqualifying separations in the base period.

When your former employee re-qualifies after the suspension of benefits, the base period wage credits paid by you are used to determine benefit entitlement; however, the benefits paid to this claimant are not charged to your experience account. You are relieved of those charges. Instead, the charges are made to the UI Fund as a whole through the Mutualized Benefit Charge. See part D for details on how these charges work.

VII. Your Employer Experience Account

C. How Your Former Employee's Benefits Claim Affects Your UI Experience Account (Continued)

Discharge for Just Cause

"Discharge for just cause" includes, but is not limited to, discharging (or firing) your employee for:

- Falsification of an employment application to obtain employment based on incorrect information;
- A knowing violation of a reasonable and uniformly enforced employer rule;
- Unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;
- Damaging the employer's property through willful negligence;
- Refusing to obey instructions;
- Reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs at the workplace during working hours;
- Conduct endangering safety of self or co-workers;
- Incarceration in jail following conviction of a misdemeanor or felony; or
- Any breach of duty in connection with work which is reasonably owed the employer by an employee.

Gross Misconduct

"Gross misconduct" includes a felony or class A misdemeanor committed in connection with work, but only if the felony or misdemeanor is admitted by the individual or has resulted in a conviction. Benefits will not be held in abeyance pending the result of criminal proceedings.

D. Mutualized Benefit Charges

When your experience account is relieved of charges, as described in section VII-C above, the charges are made against the UI Trust Fund as a whole.

Each calendar year, all of the accumulated relieved charges are distributed proportionately among tax-paying employers. This distribution is based on the percentage resulting from dividing each employer's taxable payroll by the total of all state employers' taxable payrolls. This calculated percentage is the portion of the total relieved charges that that employer will have charged to its experience account. This charge is called the **mutualized benefit charge**.

You will receive an annual Statement of Mutualized Benefit Charges that reflects the amount of your mutualized benefit charge for the year. This is not a bill. You do not need to pay this amount. It will be deducted from your experience account balance. This statement is mailed in July.

VIII. Your Former Employee Files a Benefits Claim – What To Expect

A Former Employee Files a Claim

Statement of Benefit Charges

Each month IDWD sends a Statement of Benefit Charges (State Form 535) to employers whose accounts have been charged as a result of benefits paid to their former employees. You should:

1. Review the statement carefully;
2. Make sure that charges listed are correct; and
3. Contact IDWD by telephone or writing as soon as possible if you find incorrect charges or have questions.

Separating and Base Period Employer Notice

Whenever an individual files an initial claim for benefits, his/her last employer and all of his/her base period employers are informed and asked to verify the reason for the claimant's unemployment. This notifies you that your experience account is potentially chargeable and provides you an opportunity to report information that may affect the charging of benefits or the claimant's eligibility.

If the claimant is unemployed for any of the reasons listed below, you must submit Form 501 (or a letter as described below) to IDWD. The form or letter must be submitted within twenty (20) calendar days after the date of the notice. Submit this form if the claimant:

- Quit voluntarily or was absent for reasons unknown;
- Was discharged for just cause (see section VII-C);
- Was discharged for gross misconduct (see section VII-C);
- Is entitled to vacation pay, pay in lieu of vacation, "standby pay," or wages

in lieu of notice;

- Is receiving or will receive retirement pay; or
- Is otherwise ineligible.

Do not notify IDWD if the employee was laid off, unless other monetary eligibility issues exist (e.g., receipt of vacation pay, etc.)

If a letter is submitted, it must include claimant's name, social security number, and all pertinent facts surrounding the separation. Letters should be submitted to:
Indiana Dept. of Workforce Development
Attn: UI Claims Adjudication Center
10 N. Senate Ave., RM SE 113
Indianapolis, IN 46204-2277

This correspondence (letter or form) should be faxed, if possible, to IDWD at (317) 233-5499.

Determination of Eligibility

If there is a question concerning a claimant's eligibility, all facts surrounding the issue will be obtained through a fact-finding process conducted by IDWD. After this process is completed and facts have been evaluated, IDWD will issue a Determination of Eligibility (Form UC-511). Copies will be mailed to the claimant and the former employer.

Either side may appeal this determination and request a hearing before an Administrative Law Judge ("ALJ"). The request must be made in writing, by filling out the reverse side of the Determination of Eligibility. This request for appeal must be received by IDWD within twenty (20) days from the date the Determination of Eligibility was mailed. A letter indicating a desire to appeal may be submitted in lieu of the appeal form. For more information on the appeals process, see section X below.

IX. Maintaining Integrity in the Unemployment Insurance Program

A. Employer Audits

IDWD has increased its efforts to safeguard the integrity of the UI Trust Fund. IDWD detects and prevents benefit overpayments and also audits employers. UI Tax Auditors are stationed throughout the state to conduct random and targeted compliance audits of Indiana employers in order to ensure that you are complying with SUTA regulations.

Employment Records

In preparation for these audits, you are required to keep accurate payroll and employment records. Records must show:

- The name and Social Security number of each employee;
- The cash remuneration paid to each employee per calendar quarter;
- Remuneration other than cash given to each employee;
- The dates each employee worked and/or the date on which wages were last paid;
- The reason the employee left work;
- The reason for any lost time that affected employee wages;
- The amount earned by each employee during each calendar week;
- Whether each week worked by each employee was a full or part-time week; and
- The base of operations of each employee.

Your records and reports to IDWD are confidential and are not published or open to the public for inspection.

These records must be open at all times for inspection and must be retained for at least the last five (5) years.

B. SUTA Dumping

SUTA dumping is the practice of circumventing or manipulating the UI tax system in order to qualify for a reduced tax rate.

These practices have been illegal since January of 2006, and IDWD is committed to detecting, preventing, and investigating these suspicious employer transactions.

You must do the following in order to avoid running afoul of SUTA dumping law:

Mandatory Transfers

UI experience account balances must be transferred whenever there is:

- Substantially common ownership, management, or control of two (2) employing units; and
- One employing unit transfers its trade or business (including its workforce), or a portion thereof, to the other employing unit.

Prohibited Transfers

UI experience account balance may not be transferred, and a new employer tax rate will be assigned, when a person who is not an employing unit acquires the trade or business of an existing employing unit primarily for the purpose of obtaining a lower tax rate.

IX. Maintaining Integrity in the Unemployment Insurance Program

B. SUTA Dumping (Continued)

Penalties for SUTA Dumping

Any employer that knowingly or recklessly violates or attempts to violate the law will be subject to the highest tax rate for the current and following three (3) years. If the employing unit is already at the highest tax rate or if the amount of the rate increase is less than 2%, a penalty equal to 2% of taxable wages will be imposed for the current and following three (3) years. Any person who is not an employer who knowingly or recklessly violates or attempts to violate the law by providing SUTA Dumping advice may be subject to a civil penalty of up to \$5,000.

Why SUTA Dumping is Harmful

Under the experience rating system, you pay UI taxes at rates commensurate with your employees' claims activity. Employers with high unemployment activity pay higher UI tax rates and employers with lower activity pay less. Employers who engage in SUTA Dumping (or other tax manipulation schemes) to avoid paying their fair share unfairly shift their costs to other employers.

SUTA Dumping is harmful because it:

- Compromises the integrity of the UI system;
- Results in an uneven playing field;
- Adversely affects tax rates for all employers; and
- Costs the UI Trust Fund millions of dollars each year.

X. The Appeals Process

A. Appeals

A claimant or interested employer may appeal the initial determination of liability or eligibility for UI benefit payments. You may appeal to an Administrative Law Judge (“ALJ”) and have subsequent appeals to the Review Board, followed by the Indiana Court of Appeals.

Employer Tax Liability Appeals

A liability ALJ conducts hearings concerning employer coverage and tax liability. The ALJ’s jurisdiction includes controversies between employers and IDWD regarding:

- Assessments for interest, taxes, and penalties;
- Transfers of an employer’s experience balance and tax rate determination in cases of business succession;
- Claims for refunds of taxes or adjustments;
- Protests of benefit charges;
- Tax rates calculated by IDWD; and
- SUTA Dumping (see section IX-B).

You may appeal an initial determination by writing IDWD Tax Administration, 10 N. Senate Ave., Indianapolis, IN 46204. The appeal will be considered to have been timely filed if it is received by IDWD within fifteen (15) days after the mailing date of the initial determination. The liability ALJ will set a date for the hearing and notify the interested parties. **You can appear in person, and you have the right to have an attorney-at-law represent you, though it is not necessary that you have an attorney. If legal counsel is retained, it is done so at your own expense.**

The decision of the liability ALJ becomes final thirty (30) days after its mailing date, unless, before that time, there is a filing of a Notice of Appeal. The Notice of Appeal delays the finality of the decision for thirty (30) days.

Claimant Eligibility Appeals

The ALJs and Review Board have jurisdiction over appeals relating to benefit eligibility. A party appealing a IDWD Determination of Eligibility (UC-511) may first request a hearing before an ALJ. After an ALJ hearing and decision, an unsuccessful party can appeal the ALJ’s decision to the Review Board. A party disagreeing with the Review Board’s decision can appeal to the Indiana Court of Appeals. ALJ and Review Board hearings are informal, but the fundamental rules of evidence and procedure apply.

To file an appeal, you should complete the reverse side of the Determination of Eligibility (UC-511) and file the entire form with:

UI Appeals

311 W. Washington St., Ste. 101
Indianapolis, IN 46204
(Fax) 317-233-6888

This must be done within ten (10) days from the mailing date of the Determination of Eligibility. The appeal period begins when IDWD mails the Determination of Eligibility, not when you (or the claimant) receive the document.

X. The Appeals Process

A. Appeals (Continued)

Postponement of Hearings

A hearing is postponed, generally, only in cases of emergency. Any other request for postponement must be made as soon as possible, well in advance of the scheduled hearing date.

Hearings are usually conducted in IDWD offices. A copy of the written request for postponement must be filed with the ALJ at least three (3) days before the date of the hearing, and a copy of the request must be sent to the other party. You must indicate on the request that this copy was sent. The ALJ will not automatically grant a postponement. The ALJ will consider the merits of each request.

If you are the appealing party, you fail to appear at the hearing, and you did not receive approval of a request for postponement, the ALJ will dismiss the appeal. You then have seven (7) days from the mailing date of the Notice of Dismissal to file a written request with the ALJ for reinstatement of the appeal. Your request must include a good cause for your failure to appear.

When there is a hearing, the parties involved have an obligation to be present with any relevant documents and witnesses. Relevant documents might include:

- Attendance records,
- Performance reports,
- Counseling records,
- Work rules, and/or
- Physician's statements.

The ALJ can accept written statements, whether notarized or not, but they will be given no weight because they are not subject to cross-examination or rebuttal. Witnesses should have personal knowledge (acquired from their own experience, not

from what others have told them) of the facts or circumstances about which they will testify.

The ALJ will make a decision based upon the evidence and testimony the parties present at the hearing. The ALJ will consider all evidence that would be admissible under common law and the statutory rules of evidence.

B. Review Board Proceedings

Either side may appeal the ALJ's decision. To appeal an ALJ decision, you must file a letter of appeal with the Review Board that indicates on its face:

- Your desire to appeal; and
- The reason for the appeal.

The appeal must be filed within fifteen (15) days after the date the ALJ's decision was mailed to you. This letter should contain a specific and concise statement explaining why you believe the ALJ's decision is wrong.

In most cases, the Review Board will examine the record of the hearing before the ALJ and will reach its decision based upon the facts presented at the hearing. The Review Board may grant a request to introduce additional evidence, if the requesting party shows good cause that the evidence is relevant. This request should be included with the appeal letter.

A Review Board decision becomes final thirty (30) days after the decision is mailed to the interested parties, unless a Notice of Appeal to the Court of Appeals has been filed with the Review Board within that time.

X. The Appeals Process

C. Indiana Court of Appeals

Appeals to the Court of Appeals may be made for errors of law, or findings not supported by the evidence. These appeals are held under the same terms and conditions that govern appeals in all civil actions.

XI. Frequently Asked Questions

What is Unemployment Insurance?

Unemployment Insurance (“**UI**”) is a federal-state program developed and financed through the Federal Unemployment Tax Act (“**FUTA**”) and paid by employers’ state UI taxes (or contributions). Your state taxes are regulated under the State Unemployment Tax Act (“**SUTA**”). Benefits are paid to employees that are unemployed **through no fault of their own**, which enables employees who have been laid off to remain in the area to be available for re-employment. The program stabilizes the local and state economies by preventing a sharp drop in consumer spending during periods of unemployment.

Who pays Unemployment Insurance?

Employers pay quarterly UI contributions (“UI tax”) once they meet the employer qualifications under Indiana Code § 22-4-7 (see section II-A). Employers must register with IDWD for an employer account. UI tax is paid to IDWD. IDWD holds these funds in trust for the payment of UI benefits. UI tax **is not** deducted from employees’ wages.

Who is an Employer?

An employer is an individual or an organization that pays wages or compensation to an individual in exchange for the performance of services and is subject to the law under a qualifying subsection of Indiana Code § 22-4-7. These qualifications are explained in section II-A.

What is a Reimbursable Employer? What taxes do they pay?

Not-for-profit organizations and government employers may choose to reimburse the UI Trust Fund for benefit payments. A not-for-profit organization must meet the criteria defined in the Internal Revenue Code, Section 501(c)(3) (see section II-G), provide a copy of the Internal Revenue Service (“**IRS**”) exemption letter, and submit a completed State Form 1065 (Election To

Pay Tax Or To Become Liable). Once you qualify as a reimbursable employer, the status is kept for a period of two (2) years, at which time you may elect to become a taxable employer. Like taxable employers, reimbursable employers must also file quarterly gross wages on the UC-1 and a UC-5 report.

Reimbursable employers must pay into the UI Trust Fund an amount equal to the benefits charged on their accounts. Reimbursable employers will be charged for all benefits paid from their own experience accounts to former employees.

Who is an Employee?

An employee is an individual who performs a service for a person or organization under a contract of hire. One test applied to determine if an individual is an employee, as opposed to an independent contractor, is whether or not the individual or organization for which the service is performed has the legal right to control the way in which the service is carried out. It is the **right to control** that is important. It is not necessary that the control is ever exercised.

What are Wages?

Wages include **all remuneration** paid for services performed and include salaries, bonuses, commissions, vacation pay, retroactive pay increases, and any other payments made by an employer, unless exempted. The term wages also includes the cash value of any asset that is given to an employee as compensation for his/her services.

XI. Frequently Asked Questions

Who must register with the Indiana Department of Workforce Development (IDWD)?

A new employer who is subject to the IDWD Act (see section II-A) and any employer that acquires an existing business. The acquirer **cannot** use the prior owner's account number. The acquirer must also apply for a new federal identification number with the Internal Revenue Service.

An entity change occurs any time a business changes from one type of ownership to another. The change from a sole proprietor to a corporation or a partnership is a type of entity change. Changing stock ownership in a corporation is not an entity change. **Report entity changes to IDWD to determine if a new account is needed.**

How do I register?

Once you are subject to UI law, you must file an application on State Form 2837 (Report To Determine Status) with the IDWD. You will be given an individual employer account number and you must begin filing quarterly contribution reports (form UC1) and quarterly wage reports (form UC5).

Failure to register does not relieve you of the responsibility to remit UI Taxes timely.

What will my rate be? What must I pay?

A new employer rate will be 2.7% for thirty-six (36) months, based on the fiscal year beginning July 1st and ending June 30th. After you have thirty-six (36) months experience with the IDWD, you will qualify for a merit rate calculation.

If you are an experienced employer, Indiana has a variable tax rate based on your individual unemployment account history

and the past year's statewide unemployment activity.

You will pay an assigned merit rate on the first \$7,000 of wages per employee, per year. Anything over \$7,000 is considered excess wages. Excess wages are exempt from UI tax.

May I get UI coverage for workers if I do not qualify as an employer under the IDWD Act?

Yes, if you do not qualify as a covered employer, but want UI coverage for workers, you may apply for *voluntary coverage*. If voluntary coverage is approved, you must cover employees for at least two (2) years.

What records must I keep?

For UI purposes, you must keep a record of:

- The beginning and ending date of each pay period;
- Total wages paid during each pay period;
- The number of employees you employ on the 12th day of each month and total number of employees each quarter;
- Each employee's name, social security number and wages for each pay period;
- The date each employee was hired, re-hired, or returned to work after a temporary lay-off; and
- The date each employee was terminated and the cause of the termination.

XI. Frequently Asked Questions

My business is a corporation, and I am a corporate officer. Do I have to report the wages that I earn from my corporation?

Your corporation is a legal entity that employs you. Covered wages that you earn from the corporation are the wage credits needed to file an application for UI benefits.

The amount of UI benefits available to you will depend on the wage credits you receive from the corporation and the conditions of your separation from employment.

Why can't I treat my workers as independent contractors?

The status of your workers is determined by the amount of control you have over the manner in which they perform services for you. Generally, if you control the way the services are performed and have the right to discharge the worker, you are an employer.

The IDWD Act uses a three-part test to determine whether an employer/employee relationship exists. When applying the test, an employment relationship will be found to exist unless and until it can be shown that the individual(s) performing the service(s) is, and have been:

- 1) Free from control and direction;
- 2) Performing a service or services which are outside the usual course of the business; and
- 3) Customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.

XII. Glossary

Many of the terms used in Indiana's unemployment insurance program have special meanings that may differ somewhat from those generally used. Below are some simplified definitions of common UI terms. These are not legal interpretations and are provided only as a guide.

Acquirer/Successor – The purchaser of all or part of an existing Indiana operation, organization, trade, or business that results in the continuation of that operation, organization, trade, or business.

Annual Payroll – Taxable wages paid by an employer in the twelve (12) months between rate contribution dates (July 1st through June 30th).

Balance – The amount of money in an employer's experience account as of June 30th.

Base Period – The four (4) consecutive calendar quarters used in determining an individual's eligibility for Unemployment Insurance benefits. This period is the first four (4) quarters of the last five (5) complete calendar quarters preceding the week in which a claim is established.

Benefit Year – The fifty-two (52) week period during which benefits can be claimed. The benefit year begins with the calendar week during which a valid claim is filed.

Benefits (UI Benefits) – Unemployment Insurance payments to qualified recipients.

Calendar Quarter – A three (3) month period ending March 31st, June 30th, September 30th, or December 31st.

Claim, Initial – The first application made by an individual to determine eligibility for unemployment insurance (UI).

Claim, Additional – An additional application (claim) filed by an individual claimant that begins a new period of unemployment during the benefit year established by an initial claim.

Computation Date – The annual date on which an employer's tax rate is determined (June 30th).

Contributions – The required unemployment insurance tax paid quarterly.

Covered Employer – Employer subject to the provisions of the Indiana Workforce Development Act (IDWD Act). See section II-A for more information.

Credit memo - A notice of overpayment of UI tax, which will be automatically applied to future tax liabilities or refunded upon written request.

IDWD – Indiana Department of Workforce Development.

Disposer/Predecessor - The seller of all or a distinct portion of an existing Indiana operation, organization, trade, or business.

Employer – An employing unit subject to the Indiana Department of Workforce Development Act (IDWD Act). See section II-A for more details.

Employing unit - An individual or organization that has one or more employees in Indiana. This includes, but is not limited to, a partnership, association, joint venture, estate, joint trust company, insurance company, or a corporation.

XII. Glossary

Experience account – An employer's individual account maintained by IDWD that is credited for UI tax payments and voluntary payments and debited for the employer's employees' benefit payments and mutualized benefit charges.

Experience rating (Merit Rate) - The provision for establishing an employer's tax rate. See section VI-A for more details.

FUTA - Federal Unemployment Tax Act.

Gross wages - All remuneration (compensation) paid to an employee. This includes commissions, bonuses, vacation, and sick pay, regardless of whether payment is in cash or another form of payment.

Merit Rate – see Experience Rating.

Mutualized benefit charges – An employer's proportionate share of all employers' relieved benefit charges. All taxable employers receive this statement once a year showing that their experience account has been debited (charged) for their proportionate charges. This is not a bill and no payment is required.

Notice and Demand - This communication is sent immediately after a report due date when a liability has still not been paid. This is the first step in the collection process.

Reimbursable employer – Eligible non-profit and government entities that have chosen to reimburse benefits charged against them rather than make quarterly tax payments.

Remuneration - All compensation for personal services whether in cash or any other form.

SUTA - State Unemployment Tax Act. The

law that regulates the Indiana Unemployment Insurance program.

Taxable wages - The first \$7,000 of remuneration paid by an employer to each employee per calendar year.

UI- Unemployment Insurance.

Voluntary payment - An additional payment that may be made by employers to obtain a lower tax rate.

Wage credits - Remuneration paid by an employer to an individual for services rendered. This is used to establish weekly benefit amounts. Wage credits are limited to \$9250 per calendar quarter for quarters after July 1, 2005.

XIII. Special Types of Employment and Payment

The following chart will help you determine whether special types of employment and payment are taxable or exempt for UI tax purposes.

Special Types of Employment and Payment – Are The Wages Taxable?	
Type of Employment / Payment	UI Tax Status
Advances against future earnings	Taxable
Agricultural Labor	Taxable, if: <ul style="list-style-type: none"> ▪ You have agricultural employees and pay \$20,000 or more in a calendar quarter; OR ▪ You have 10 or more agricultural employees for some part of a day in each of 20 weeks during a calendar year
Aliens, resident:	
Services performed in the U.S.	Taxable
Services performed outside of the U.S.	Exempt, unless: <ul style="list-style-type: none"> ▪ Performed in connection with an American vessel or aircraft and performed under contract made in U.S.; or ▪ Alien is employed on such vessel or aircraft when it touches a U.S. port.
Annuities: Payments made by the employer into a fund for retirement or death benefits under a plan offered to all employees or a class or classes of employees	Exempt
Back Pay paid as a result of a dispute related to employment	Taxable
Bonuses	Taxable
Cafeteria plan deductions under Internal Revenue Code section 125	Taxable, if the employee chooses cash. If the employee chooses another benefit, the treatment is the same as if the benefit was provided outside of the plan.
Commissions	Taxable
Corporate Officer Payments: Corporate officers performing a service for the corporation (including sub-chapter S-corporations) are employees.	Taxable
Cosmetologists or Barbers who are licensed, contract with a shop, are free from control and direction of the shop owner, own or lease equipment, receive payment from clientele, and acknowledge in writing that they are not covered by UI.	Exempt

XIII. Special Types of Employment and Payment

Special Types of Employment and Payment – Are The Wages Taxable? (Continued)	
Type of Employment / Payment	UI Tax Status
Deceased worker:	
1) Wages paid to beneficiary or estate in year of worker's death	Taxable
2) Wages paid to beneficiary or estate after calendar year of worker's death	Exempt
Deferred Compensation	Taxable
Dependant Care Assistance Programs (limited to \$5,000 annually, \$2,500 if married filing separately)	Exempt, to the extent that it is reasonable to believe the amounts are excludable from gross income under Internal Revenue Code section 129.
Disabled Workers: Wages paid after year in which worker becomes entitled to disability insurance benefits under the Social Security Act	Taxable
Director Fees: Fees paid to directors of a corporation for attending meetings of the board of the directors	Taxable
Employee Benefit Expense Reimbursement:	
1) Amounts not exceeding specified government rate for per diem or standard mileage	Exempt
2) Amounts in excess of specified government rate for per diem or standard mileage	Taxable
Family Employees:	
1) Child employed by parent (or partnership in which each partner is a parent of the child)	Exempt – Until child reaches age of 21
2) Spouse employed by sole proprietor	Exempt
3) Parent employed by child	Exempt
Foreign Government or International Organization	Exempt
Foreign Service by U.S Citizens	
1) As U.S government employees	Exempt
2) For foreign affiliates of American employers and other private employers	Exempt, unless on American vessel or aircraft and performing work under contract made in U.S, or employee is employed on vessel when it touches a U.S port
Holiday Pay	Taxable
Home Workers (industrial, cottage industry)	
1) Common law employees	Taxable
2) Statutory employees	Exempt

XIII. Special Types of Employment and Payment

Special Types of Employment and Payment – Are The Wages Taxable? (Continued)	
Type of Employment / Payment	UI Tax Status
Hospital Employees	
1) Interns	Exempt
2) Patients	Exempt
Household Employees: Domestic service in private homes, college clubs, fraternities, and sororities	Taxable if total cash wages are \$1,000 or more (for all household employees) in any quarter in the current or preceding calendar year.
Insurance for Employees:	
1) Accident and health insurance premiums under a plan or system for employees and their dependants generally or for a class or classes of employees and their dependants	Exempt
2) Group term life insurance costs	Exempt
Insurance Agents or Solicitors: Full-time life insurance salesperson or other salesperson of life, casualty, or other varieties of insurance	Taxable if employee is an employee under common law and not paid solely by commissions.
Leave-sharing Plans: Amounts paid to an employee under a leave-sharing plan	Taxable
Limited Liability Companies (LLCs): Payments made to members of manager-managed LLC	Taxable
Newspaper Carriers and Vendors: Newspaper carriers under age 18 and newspaper and magazine vendors buying at fixed prices and retaining receipts from sales to customers	Exempt
Officers or Shareholders of an S-Corporation	Taxable
Non-profit Organizations	Taxable or Reimbursable
Officers or Shareholders of a Corporation: Distributions and other payments made by a corporation to a corporate officer or shareholder to the extent the amounts are reasonable compensation for services to the corporation by the officer or shareholder	Taxable
Partner or Sole Proprietor: Distribution of profits to general or limited partners of a partnership or to a sole proprietor	Exempt
Railroads: Payments subject to the Railroad Retirement Act	Exempt
Religious / Church	Exempt

XIII. Special Types of Employment and Payment

Special Types of Employment and Payment – Are The Wages Taxable? (Continued)	
Type of Employment / Payment	UI Tax Status
Retirement and Pension Plans:	
1) Employer contributions to a qualified plan	Exempt
2) Elective employee contributions and deferrals to a plan containing a qualified cash or deferred compensation arrangement (e.g., 401(k))*	Taxable
*Please see Publication 15-A of the Social Security Administration for more information on employer contributions	
Salespersons:	
1) Common law employees	Taxable
2) Statutory employees	Taxable, except for full-time life insurance sales agents
Severance, Termination, or Dismissal Pay	Taxable
Sick Pay	Taxable for the first 6 months following the month the employee last worked
State/Local Governments and Political Subdivisions (employees of):	
1) Salaries and wages (including payments to most elected and appointed officials)	Exempt
2) Election Workers	Exempt
Student, scholars: Student enrolled and regularly attending classes, performing services for a private school, college, or university; auxiliary non-profit organization operated for and controlled by school, college, or university; or public school, college, or university	Exempt
Tips or Gratuities reported in writing to employer	Taxable
Vacation: Paid vacation for employee	Taxable
Worker's Compensation	Exempt